(1) (3) (2)

IN THE HIGH COURT OF JUDICATURE AT BILASPUR CHHATTISGARH

WRIT PETITION NO. 40 OF 2002

PEITIONER

Smt. Brinda Sahu, W/o. Shri Shayam Sunder Sahu, aged about 25 years, Sarpanch of Gram panchayat, Godam, R/o. Village and Post Godam, Tehsil Sarangarh, District- Raigarh (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh Through Collector Raigarh District raigarh (C.G.)
2. The Sub-Divisional Officer & Prescribed Officer/Authority Sarangarh, District Raigarh (C.G.)
3. The Chief Executive Officer, Janpad Panchayat, block Colony Sarangarh, District Raigarh (C.G.)
4. The Naib Thesaildar, (Presiding Officer) Sarangarh, District Raigarh (C.G.)
5. Bhagat Ram Jangde, S/o. Shri Ghalu Jangde, Up Sarpanch of Grampanchayat Godam, R/o. Village/Post Godam, Tehsil Sarangarh, District Raigarh (C.G.)
6. Nanki Das, S/o. Not Known, Panch Grampanchayat of Godam
7. Bed Ram, S/o. Laxam Bhardvaj, Panch Gram Panchayat of Godam
8. Jadgish, S/o. Tijram Sahu, Panch Gram Panchayat of Godam.
9. Chhabilal S/o. Phirtu Bhardvaj, Panch Gram Panchayat of Godam.
10. Ghasia Sidar, S/o. Not Known Sidar, Panch Gram Pancahayat of Godam.
11. Smt. Shohan Bai, W/o. Lakhanlal David, panch Gram Panchayat of Godam.
12. Smt. Sagar Bai, W/o. Suklal Bhardvaj, Panch of Gram Panchayat Godam.
13. Smt. Lilavati W/o. Sukhdev Sahu, Panch of Gram Panchayat Godam
14. Smt. Sumitra, W/o. Shri Chamr Shigh Nishad, Panch of Gram Panchayat Godam.
15. Samaru, S/o. Khuluram Bhardvej, Panch of Gram Panchayat Godam.

Respondent No- 6 to 15 R/o Godam Tah- SARANGARH DIST- RAIGARH (C.G.)

P.R. No. 3056 dt 02
Presented by Shri R.S. Rao
dated 30.12.02

शपथ आयुक्त
एस.के. शुक्ला
बिलासपुर (छ.ग.)
20/12/02
बिलासपुर तहसील

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(2) (10) (4)

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTIONS OF INDIA FOR ISSUANCE OF WRIT IN NATURE OF CERTIORARI, MANDAMUS, PROHIBITION, AND OTHER SUITABLE WRIT OR WRITS, DIRECTION OR DIRECTIONS, ORDER OR ORDERS.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP No. 40/03 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	20.12.2004 Shri R.S. Patel, counsel for the petitioner. Shri Utkarsh Verma, Panel Lawyer for respondent No.1 to 4. Shri B.D. Guru, counsel for respondent No.5 to 15. The petitioner has preferred this petition under Article 226/227 of Constitution of India being aggrieved by the order dated 17.12.2002 (Annexure P-1) passed by the Collector, Raigarh rejecting the objections of the petitioner herein and holding the proceedings of 'no confidence motion' valid, whereby no confidence motion against the petitioner was held to be passed. The main challenge in this petition, as argued by learned counsel for the petitioner, is that notice under sub-rule (3) of Rule 3 of Gram Panchayat Ke Sarpanch... Avishwas Prastav Niyam, 1994 (hereinafter referred to as 'Rules of 1994') was not issued in accordance with sub-rule (3). He submits that initially on 27.8.2002 a notice (Annexure P-2) of meeting of Panchayat was issued to the Panchas and Sarpanch of Gram Panchayat Godam whereby the meeting for discussion on 'no confidence motion' was fixed for 9.9.2002 at 11.00 a.m. at Gram Panchayat Bhawan, Godam. However, again on 3.9.2002 Sub Divisional Officer issued a notice [Annexure P-3] whereby the place of proposed meeting was changed and it was informed that the meeting will be held in the School Building, Godam instead of Gram Panchayat Bhawan, Godam. Thus, the second notice (Annexure P-3) was not despatched before seven days from the date of meeting. He further submitted that the	

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मामला क्रमांक ..... सन् 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

requirement of sub-rule (3) is mandatory, which has not been satisfied. Therefore, the whole proceedings have become illegal and the impugned order is liable to be set-aside on this score alone. The other point raised by learned counsel for the petitioner is that three days before the meeting some of the Panchas were abducted, therefore, the meeting was not held in a fair manner and on this score also the impugned order is liable to be set aside.

On the other hand, learned counsel for the respondents argued that points raised by learned counsel for the petitioner are of no consequences, for the reason that all the Panchas had participated in the meeting, discussion had been taken place and thereafter, resolution was passed. Now the petitioner is not entitled to raise these objections, as she had not raised these objections at the time of meeting. He further submits that the proceedings of no confidence motion was drawn by the prescribed authority, which is evident from Annexure P-5 and perusal of same reveals that at the time of meeting no objection regarding non-issuance of notice before seven days of meeting or abduction of some of the Panchas was raised. Therefore, at this stage the petitioner is not entitled to raise such objections.

Having heard learned counsel for the parties, I have perused the relevant documents.

Sub-rule (3) of Rule 3 of Rules of 1994 envisages that '*on receiving the notice of no confidence motion the prescribed authority shall fixed the date, time and place for the meeting of Gram Panchayat, which shall not be more than fifteen days from the date of receipt of*

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आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -7-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

the said notice. Notice of such meeting specifying the date, time and place thereof shall be caused to be dispatched by him through the Secretary of the Gram Panchayat or Chief Executive Officer, Gram Panchayat to every member of the Panchayat concerned seven days before the meeting.'

Perusal of notice (Annexure P-2) reveals that initially notice was issued on 27.8.2002 whereby the meeting for discussion on no confidence motion was fixed for 9.9.2002 at 11.00 a.m. in the Gram Panchayat Bhawan, Godam, thus, it is clear that this notice was despatched before seven days from the date of meeting. However, vide another notice (Annexure P-3), which was despatched on 3.9.2003, the place of meeting was changed. It is true that the second notice (Annexure P-3) was not despatched before seven days of the meeting, but it was despatched before six days of meeting.

Now the question is whether this amounts to non-compliance of sub-rule (3) of Rule 3. In my opinion, in the first instance notice (Annexure P-2) was desptached to all the Panchas and Sarpanch of Gram Panchayat before seven days of the meeting and vide notice Annexure P-3 only the place of meeting was changed. Therefore, it cannot be held that the requirement of sub-rule (3) was not complied with, as the notice (Annexure P-2) was already despatched before seven days from the date of meeting. Even otherwise, as has been held by the Full Bench of High Court of M.P. in the matter of Smt. Bhulin Dewangan Vs. State of M.P. & others that even in case of non-compliance of the mandatory provisions, the court is entitled to look

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मामला क्रमांक..... **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश -५-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

into the fact whether on account of the non-compliance caused a serious prejudice to the affected office bearer or otherwise has resulted in any failure of justice.

In the present case, if we look into the facts and perusal of proceeding of the meeting shows that all the 12 members attended the meeting. Further perusal of proceedings reveals that the petitioner and other panchas were given opportunities to speak on the no confidence motion and column No.5 of the proceedings shows that one Shri Vedram Sahu spoke in favour of no confidence motion, whereas the petitioner herein spoke against the no confidence motion, but no objection was raised by the petitioner herein regarding the point that notice has not been despatched before seven days from the date of meeting or on account of that any prejudice caused to her rights.

In view of the above facts, since all the Panchas had participated in the meeting, everyone was allowed to speak in favour or against the no confidence motion and at that time no such objection regarding despatch of notice before seven days of meeting was raised by the petitioner, I am of the opinion that the petitioner has not been able to establish that any serious prejudice was caused to her on account of despatch of notice Annexure P-3 on 3.9.2002 whereby the place of meeting was changed.

Now coming to the second question that three days before the meeting some Panchaas were abducted. Counsel for the petitioner submitted that to this effect affidavit of one Panch Sagar Bai has

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मामला क्रमांक.....**सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश —5—	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	been filed (Annexure P-4). But, again perusal of proceeding shows that no such objection was raised by the petitioner herein in the meeting that three days prior to the meeting some panchaas were abducted and on account of which they were not able to cast their votes in accordance with their free will. Therefore, I am of the opinion that at this belated stage this point cannot be allowed to be raised. In the result, I do not find any substance in this petition, same is liable to be dismissed and it is, accordingly, dismissed. Sd/- L.C. Bhadoo Judge Roshan/-	

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